

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 04-6445**

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DONALD M. KINCH,

Petitioner - Appellant,

versus

SHERWOOD R. MCCABE,

Respondent - Appellee.

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**No. 04-6772**

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DONALD M. KINCH,

Petitioner - Appellant,

versus

SHERWOOD R. MCCABE,

Respondent - Appellee.

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Appeals from the United States District Court for the Eastern  
District of North Carolina, at Raleigh. Terrence W. Boyle, Chief  
District Judge. (CA-03-600)

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Submitted: August 26, 2004

Decided: September 1, 2004

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Before WIDENER and SHEDD, Circuit Judges, and HAMILTON, Senior  
Circuit Judge.

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Dismissed by unpublished per curiam opinion.

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Donald M. Kinch, Appellant Pro Se.

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Unpublished opinions are not binding precedent in this circuit.  
See Local Rule 36(c).

PER CURIAM:

Donald M. Kinch seeks to appeal the district court's orders dismissing his 28 U.S.C. § 2254 petition as untimely and denying a certificate of appealability. We dismiss the appeal in No. 04-6445 for lack of jurisdiction because the notice of appeal was not timely filed and dismiss the appeal in 04-6772 because Kinch does not meet the certificate of appealability requirements.

Parties are accorded thirty days after the entry of the district court's final judgment or order to note an appeal, Fed. R. App. P. 4(a)(1)(A), unless the district court extends the appeal period under Fed. R. App. P. 4(a)(5) or reopens the appeal period under Fed. R. App. P. 4(a)(6). This appeal period is "mandatory and jurisdictional." Browder v. Director, Dep't of Corr., 434 U.S. 257, 264 (1978) (quoting United States v. Robinson, 361 U.S. 220, 229 (1960)). The district court's order was entered on the docket on September 8, 2003. The notice of appeal was signed on February 23, 2004, and filed on February 26, 2004. Because Kinch failed to file a timely notice of appeal or to obtain an extension or reopening of the appeal period, we dismiss the appeal.

An appeal may not be taken from the final order in a habeas corpus proceeding unless a circuit justice or judge issues a certificate of appealability. 28 U.S.C. § 2253(c)(1) (2000). A certificate of appealability will not issue absent "a substantial showing of the denial of a constitutional right." 28 U.S.C.

§ 2253(c)(2) (2000). A prisoner satisfies this standard by demonstrating that reasonable jurists would find that his constitutional claims are debatable and that any dispositive procedural rulings by the district court are also debatable or wrong. See Miller-El v. Cockrell, 537 U.S. 322, 336 (2003). We have independently reviewed the record and conclude that Kinch has not made the requisite showing. Accordingly, we deny a certificate of appealability and dismiss the appeal of the district court's order denying a certificate of appealability.

We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

DISMISSED